

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

In the Matter of	)	
	)	
Application of	)	
	)	
EchoStar Communications Corporation (a	)	
Nevada Corporation), General Motors, and	)	
Hughes Electronics Corporation (Delaware	)	
Corporations)	)	
	)	
(Transferors)	)	CS Docket No. 01-348
	)	
and	)	
	)	
EchoStar Communications Corporation (a	)	
Delaware Corporation)	)	
	)	
(Transferee)	)	
To: Chief Administrative Law Judge		
Richard L. Sippel		

**OPPOSITION TO REQUEST TO CERTIFY QUESTION  
 AS TO WHETHER HEARING SHOULD BE HELD**

1. EchoStar Communications Corp. (“EchoStar”), General Motors Corp., and Hughes Electronics Corp. (collectively, the “Applicants”), have filed a request under Section 1.106(a)(2) of the Commission’s Rules, 47 C.F.R. § 1.106(a)(2), to certify to the Commission the question whether this hearing should be held.’ The Request should be denied, without prejudice to the Applicants’ right to seek relief at a later date, or deferred.

2. The Applicants recently filed with the Commission a petition to suspend this hearing <sup>2</sup> and an amended application for authority to transfer control. <sup>3</sup> The amended application is different from

<sup>1</sup> See Request to Certify Question as to Whether Hearing Should Be Held (Nov. 18, 2002) (the “Request”).

<sup>2</sup> See Petition For Suspension of Hearing (Nov. 27, 2002).

<sup>3</sup> See Amendment to Consolidated Application for Authority to Transfer Control (Nov. 27, 2002).

the original. The amended application seeks to address the concerns identified in the Commission's hearing designation order. If the Commission grants the amended application, the Request will be moot because no hearing would be needed. If the Commission rejects the amended application and the hearing process goes forward, the Applicants presumably will use the hearing to defend the amended application, not the application that is the subject of the instant Request. Moreover, in its ruling on the amended application, the Commission will likely, either explicitly or implicitly, address the concerns raised by the Applicants in the Request.<sup>4</sup> Certifying the question, at this time, is unnecessary and a waste of Commission resources.

3. The Applicants are also seeking to defer a ruling on the Request while their petition to suspend the hearing is pending.<sup>5</sup> We agree that, if the Request is not denied, it should be deferred. The Bureau and other parties to this proceeding should not be required to address the merits of the Request now, particularly when it appears that the Applicants are no longer defending their original application. If, after the Commission acts, the Applicants deem it necessary to file a renewed Request or seek action on the deferred Request, we will address the merits then.

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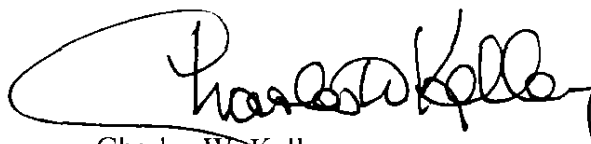
<sup>4</sup> The Applicants' arguments in support of the amended application are similar to those in the Request. **Compare** Request to Certify Question as to Whether Hearing Should Be Held at 3-24 (Nov. 18, 2002), **with** Amendment to Consolidated Application for Authority to Transfer Control at 73-57 (Nov. 27, 2002).

<sup>5</sup> **See** Request at iv, 24

**CONCLUSION**

4. For the reasons set forth above, the Request should be denied, without prejudice to the Applicants' right to seek relief at a later date, or deferred.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles W. Kelley". The signature is fluid and cursive, with a large loop at the beginning.

Charles W. Kelley  
Chief, Investigations and Hearings Division  
Enforcement Bureau

A handwritten signature in black ink, appearing to read "Joel A. Rabinovitz". The signature is cursive and somewhat stylized.

Joel A. Rabinovitz  
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A handwritten signature in black ink, appearing to read "Chris Killion". The signature is cursive and somewhat stylized.

Christopher L. Killion  
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December 3, 2002

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## **CERTIFICATE OF SERVICE**

I, Karen Richardson, legal technician for the Investigations and Hearings Division, Enforcement Bureau, certify that I have, on this 3rd day of December, 2002, served copies of the foregoing "Opposition to Request to Certify Question as to Whether Hearing Should be Held" via mail or hand to the persons and entities set forth below.



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